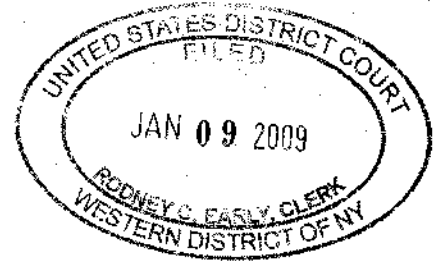


UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF NEW YORK

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SIMON E. KIRK,

Plaintiff,

vs.

08-CV-6016

NEW YORK STATE DEPARTMENT OF EDUCATION;  
RICHARD P. MILLS, Commissioner of Education;  
NEW YORK STATE BOARD OF REGENTS; and  
ROBERT M. BENNETT, Chancellor of the  
New York State Board of Regents,

Hon. Charles J. Siragusa  
United States District Judge

Defendants

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### ORDER AND JUDGMENT

Plaintiff Simon E. Kirk, by his attorneys, Harter Secrest & Emery LLP, has moved the Court for an order pursuant to Rule 54(d)(2) of the Federal Rules of Civil Procedure for an allowance of his reasonable attorneys' fees, disbursements, and expenses.

The Court has read and considered the Declaration of Margaret A. Catillaz, Esq., dated July 21, 2008; the Declaration of Angelo G. Faraci, Esq., dated July 21, 2008; the Declaration of Daryl Buffenstein, Esq., dated July 21, 2008, the Supplemental Declaration of Margaret A. Catillaz, Esq., dated August 11, 2008, and the Reply Declaration of Margaret A. Catillaz, Esq., dated October 30, 2008, all submitted in support of the motion. The Court has also read and considered the Attorney's Declaration of Gary M. Levine, dated October 15, 2008, submitted in opposition to the motion. The Court heard oral argument on the motion on November 13, 2008 from Harter Secrest & Emery LLP, Margaret A. Catillaz, Esq., of counsel, in

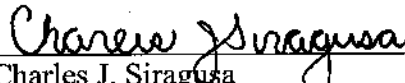
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support of the motion, and Andrew Cuomo, Attorney General of the State of New York, Gary M. Levine, Esq., of counsel, in opposition to the motion.

As a result of this Court's Decision and Order dated June 23, 2008 and Judgment dated June 24, 2008, the plaintiff is the prevailing party in this action. It is therefore

ORDERED AND ADJUDGED, that the plaintiff's motion for an award of attorneys' fees and disbursements and expenses is granted, that the plaintiff is entitled to reasonable attorneys' fees in the amount of \$73,674.50, that the plaintiff is entitled to a further allowance of disbursements and expenses in the amount of \$674.94, and that the plaintiff shall have judgment against the defendants accordingly in the aggregate amount of \$74,349.44.

January 5, 2009

  
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Charles J. Siragusa  
United States District Judge